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1.1 Summary of Benchbook Contents

This benchbook explains the procedures required in child protective proceedings, from reporting and investigating suspected child abuse and

neglect, to required court hearings in the Family Division of the Circuit Court, to appeals to the Court of Appeals. Detailed coverage is given to required court procedures: although child protective proceedings involve a complex interplay between the judicial and social services systems, this benchbook focuses mainly on court proceedings. The following limitations on subject matter should be noted:

- F internal Family Independence Agency policies governing child protective, foster care, and supervising agency workers are cited when relevant but are not dealt with in-depth, and
- F detailed treatment of the legal requirements for adoptions should be sought in other sources.

Note: Throughout this benchbook, “Family Division” is used to describe the Family Division of the Circuit Court. References to the probate court or “juvenile court” used in statutes, court rules, or case law have been altered to conform to this usage. MCR 5.903(A)(8) states that “juvenile court” or “court” means the Family Division of the Circuit Court when used in Subchapter 5.900. In addition, MCL 600.1009; MSA 27A.1009, states that a reference to the former Juvenile Division of the Probate Court in any statute shall be construed as a reference to the Family Division of Circuit Court.

The organization of this benchbook is intended to follow a typical child protective proceeding. Chapter 2 explains the requirements for reporting and investigating suspected child abuse or neglect. A report of suspected abuse or neglect culminates in action by the Child Protective Services Division of the Family Independence Agency. This action may involve either offering services and counseling to the family or filing a petition requesting formal court action.

If a Child Protective Services worker (or other person) presents a petition to the Family Division, the court must follow certain procedures when deciding whether to take jurisdiction over the child and place him or her outside of the home. These preliminary steps are explained in the following chapters:

- F Chapter 3 explains the requirements for subject matter jurisdiction, personal jurisdiction, proper venue, and transfer of the case.
- F Chapter 4 outlines the procedures for obtaining custody of a child, either with a court order or without a court order.
- F Chapter 5 summarizes time and notice requirements applicable to all stages of a child protective proceeding.
- F Chapter 6 deals with petition requirements and the court’s option of using a preliminary inquiry if the child is not in custody and custody is not requested.
- F Chapters 7 and 8 detail the procedures required at a preliminary hearing, during which the court must decide whether to authorize the petition to be filed and whether to place the child outside of his or her home

pending trial. The court may also order an alleged abuser of the child out of the child's home, rather than removing the child from the home.

If the court authorizes the filing of the petition, a trial will be held, unless the parent enters a plea of admission or no contest, to determine whether the court will take personal jurisdiction over the child. This stage of the proceedings, known as the "adjudicative phase," is detailed in the following chapters:

- F Chapter 9 covers pretrial conferences and motions.
- F Chapter 10 details the procedures for taking a parent's plea of admission or no contest.
- F Chapter 11 discusses common evidentiary issues in child protective proceedings.
- F Chapter 12 explains the required procedures for trials in child protective proceedings.

If the court takes jurisdiction over the child, the case moves into the "dispositional phase." During the dispositional phase, the family must participate in court-ordered services and counseling designed to improve the conditions leading to court jurisdiction and, if necessary, to reunify the family. If, at the initial dispositional hearing, regularly held review hearings, or a permanency planning hearing, the court determines that the family should not be reunified, a hearing on termination of parental rights will be held. The dispositional phase is described in the following chapters of this benchbook:

- F Chapter 13 covers initial dispositional hearings, including the required procedures for terminating parental rights at the initial dispositional hearing.
- F Chapters 14 and 15 deal with review of referees' recommended findings and conclusions, and rehearings.
- F Chapter 16 explains the procedures for conducting dispositional review hearings when the child has been placed outside the home, and for conducting emergency removal hearings when the agency supervising a child who was not removed from the home believes that the child is in immediate danger of harm.
- F Chapter 17 covers permanency planning hearings, which are held to decide upon a permanent plan for the child, and whether to proceed with a hearing on termination of parental rights.
- F Chapter 18 explains in detail the procedures required for terminating parental rights to a child.
- F Chapter 19 sketches the post-termination review process, during which efforts to find a permanent adoptive or foster family are monitored by the court.
- F Chapter 20 covers the heightened procedural requirements that must be observed in child protective proceedings involving Indian children.

The final two chapters cover matters that are applicable to all stages of child protective proceedings:

- F Chapter 21 covers appeals in child protective proceedings.
- F Chapter 22 covers Family Division recordkeeping requirements.

1.2 Table Summarizing Statutes and Court Rules Related to Child Protective Proceedings

The following table provides general guidance in locating statutes and court rules cited in this benchbook related to child protective proceedings. Note that other statutes and court rules may be incorporated by reference in these provisions. See MCR 5.901(A).

Type of Proceeding	Statutes and Court Rules
Child Protective Proceedings in Family Division	<p>Statutes:</p> <ul style="list-style-type: none"> —MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq. (Juvenile Code) —§§36–39 and §51 of the Michigan Adoption Code, MCL 710.21 et seq.; MSA 27.3178(555.21) et seq. (termination of parental rights under Adoption Code) —MCL 600.651 et seq.; MSA 27A.651 (Uniform Child Custody Jurisdiction Act) —25 USC 1901 et seq. (Indian Child Welfare Act) <p>Court Rules:</p> <ul style="list-style-type: none"> —MCR 5.901–5.927 (general rules for juvenile and child protective cases) —MCR 5.961–5.974 (rules for child protection cases) —MCR 5.980 (rule for American Indian child protection cases) —MCR 5.991–5.993 (reviews, rehearings, and appeals)
Reporting and Investigation of Suspected Child Abuse or Neglect	<p>Statutes:</p> <ul style="list-style-type: none"> —MCL 722.621 et seq.; MSA 25.248(1) et seq. (Child Protection Law) —MCL 722.904; MSA 25.248(104), of the Parental Rights Restoration Act (judicial reporting of suspected abuse following hearing on waiver of parental consent for abortion) —MCL 333.2640 and 333.16281; MSA __.____, and 14.15(16281), of the Public Health Code (release of medical records) —MCL 330.1748a; MSA 14.800(748a), of Mental Health Code (release of mental health records) <p>Court Rule: MCR 3.218(C) (access to Friend of the Court records)</p>

Type of Proceeding	Statutes and Court Rules
Care and Custody of a Child Subject to Protective Proceedings	Statutes: —MCL 700.424 and 700.424c; MSA 27.5424 and 27.5424(3), of the Uniform Guardianship and Protective Proceedings Act (appointment of guardians) —Foster Care and Adoption Services Act, MCL 722.951 et seq.; MSA 25.359(1) et seq. (rules governing supervising agencies) —MCL 722.124a(1); MSA 25.358(24a)(1) (consent for medical treatment of court ward)

1.3 Summary of Recent Legislation

In 1997 and 1998, the Michigan Legislature enacted several changes to the laws governing child protective proceedings. The impetus for the changes came from several sources, most importantly the recommendations of the Binsfeld Children's Commission. See *In Our Hands: Report of the Binsfeld Children's Commission* (1996).^{*} In summary, the recent changes to state law do the following:

- F provide the Family Independence Agency (FIA) with more flexibility to investigate and respond to allegations of child abuse and neglect;
- F require the FIA to file court petitions in cases of severe physical or sexual abuse, or where there is current risk to a child combined with the prior termination of parental rights to another child;
- F require the appointment of a "lawyer-guardian ad litem" to serve as the child's attorney at all hearings;
- F give the court authority to order abusive adults out of the child's home as an alternative to placement of the child;
- F place greater emphasis on placement of the child with a suitable relative;
- F require supervising agencies to develop "medical passports" for all children in foster care;
- F limit the ability of an agency to make changes in a child's foster-care placement;
- F provide more stringent time requirements for hearings;
- F expand the grounds for termination of parental rights;
- F expand the duties of the Foster Care Review Board; and
- F require the State Court Administrative Office and the FIA to develop a "report card" to monitor performance of entities under their jurisdiction.

^{*}For a discussion of recent federal legislation in the area of child welfare, see Benchnotes 2 and 3.

Note: Because this portion of Chapter 1 is meant to be an introduction, it does not contain the citations to authority that are contained in the rest of the benchbook. Instead, all of the references in this portion are to sections of the benchbook where those citations may be found.

*See Section 3.2 (subject matter jurisdiction of child protective proceedings).

*See Section 3.15.

*See Section 3.5.

*See Sections 7.23 (orders affecting “nonparent adults” at preliminary hearing) and 13.21 (court-ordered compliance with Case Service Plan).

A. Creation of Family Division of Circuit Court*

Beginning January 1, 1998, jurisdiction of child protective proceedings was transferred from the Juvenile Division of the Probate Court to the newly created Family Division of the Circuit Court.

B. Matters Involving Members of Same Family Must Be Assigned to Same Family Division Judge When Practicable*

Whenever practicable, two or more matters within the Family Division’s jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. The petition in a child protection case must now identify other matters involving family members.

C. Family Division Has Jurisdiction Over “Nonparent Adults”*

Effective July 1, 1999, the Family Division has jurisdiction over a child whose home is unfit because of the conduct of a “nonparent adult.” A “nonparent adult” is a person 18 years old or older who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction:

- F the person has substantial and regular contact with the child;
- F the person has a close personal relationship with the child’s parent or with a “person responsible for the child’s health or welfare”; and
- F the person is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.

D. Family Division May Issue Orders to “Nonparent Adults”*

The court may issue orders that affect a “nonparent adult” and that do any of the following:

- F require the “nonparent adult” to participate in the development of the Case Service Plan;
- F require the “nonparent adult” to comply with the Case Service Plan;
- F permanently remove the “nonparent adult” from the child’s home; and
- F permanently restrain the “nonparent adult” from coming into contact with or within close proximity of the child.

E. A Parent's Parental Rights May Be Terminated Because of Abuse or Injury Caused by A "Nonparent Adult"*

Effective July 1, 1999, the court may terminate a parent's parental rights to a child if the child or a sibling has suffered physical injury or abuse or sexual abuse caused by a "nonparent adult" and the court finds that "there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home."

*See Section 18.28 (termination of parental rights based on physical injury or sexual abuse).

F. FIA Has Increased Access to Medical and Mental Health Records During Investigation of Suspected Child Abuse or Neglect*

Effective March 1, 1999, if there is a compelling need for the records to determine whether child abuse or neglect has occurred or to take action to protect a child from a substantial risk of harm, the Department of Community Health, health care professionals, and mental health professionals must release pertinent records and information about a child who is the subject of an abuse or neglect investigation. Evidentiary privileges do not apply to information released under these provisions.

*See Section 2.18 for a detailed discussion of FIA access to confidential records during an investigation of suspected child abuse or neglect.

G. FIA Must Now Classify Allegations of Child Abuse or Neglect in Five-Tiered System*

Effective July 1, 1999, the Child Protection Law has been amended to change the way the Family Independence Agency determines whether an allegation of child abuse or neglect is "substantiated" or "unsubstantiated." Following its investigation of an allegation, the FIA must now place the case in one of five categories. Category V, for example, requires no response by either the FIA or the parent, and is equivalent to a finding that the allegation was "unsubstantiated" under the previous regime. Categories IV and III require that community services be offered the parent, and that the FIA maintain an internal record of the case. Category II requires that a protective services case be opened and the perpetrator's name be listed on FIA's central registry. Category I requires that a petition be filed by FIA in the Family Division.

*See Section 2.21 for a complete discussion of these requirements.

H. FIA Must File Petition Within 24 Hours After Determining That Child Was Severely Physically Injured or Sexually Abused*

Effective April 1, 1998, the Family Independence Agency must now file a petition seeking Family Division jurisdiction over a child who it determines was severely physically injured or sexually abused. The petition must be submitted to the court within 24 hours of the FIA's determination. The court must hold a hearing on the petition within 24 hours after it is filed or on the next business day.

*See Sections 2.24 (required filing of petition) and 7.4 (time requirements for preliminary hearings).

*See Sections
7.19–7.20 and
7.23.

I. Court May Order Parent, Guardian, Custodian, “Nonparent Adult,” or Other Person Out of Child’s Home*

If a petition is filed in the Family Division alleging that the child was abused, the court may order a parent, guardian, custodian, “nonparent adult,” or other person residing in a child’s home to leave the home and not return. The court may enter such an order if it determines that probable cause exists that the person perpetrated the abuse and that the person’s presence in the home presents a substantial risk of harm to the child’s life, physical health, or mental well-being.

Regardless of whether the court orders the alleged abuser out of the child’s home, the court may not return the child to the home or place the child in unlicensed foster care unless the court finds that the conditions of custody at the placement and with the individual are adequate to safeguard the child from risk of harm.

The provision allowing the court to order the alleged abuser out of the child’s home is effective April 1, 1998. The provision applying this rule to “nonparent adults” is effective July 1, 1999.

J. Court Must Appoint “Lawyer-Guardian Ad Litem” for Each Child*

Effective March 1, 1999, the court must appoint a “lawyer-guardian ad litem” for the child in a child protective proceeding. The lawyer-guardian ad litem’s duty is to the child, not to the court. A new section was added to the Juvenile Code listing the lawyer-guardian ad litem’s powers and duties. Previously, courts appointed an attorney or “guardian ad litem” to represent a child in protective proceedings, and there was confusion over the proper role of counsel for a child. Under the amended statute, the child’s lawyer-guardian ad litem may not be called as a witness and his or her case file is not discoverable.

K. Court Must Appoint an Attorney for Child Only If “Lawyer-Guardian Ad Litem” and Child Disagree as to Child’s Best Interests*

Effective March 1, 1999, if the lawyer-guardian ad litem’s determination of the child’s best interests and the child’s wishes are inconsistent, the court may appoint an attorney, in addition to the lawyer-guardian ad litem, to represent the child. In deciding whether to appoint an attorney, the court may consider the child’s age and maturity, and the nature of the inconsistency between the lawyer-guardian ad litem’s determination and the child’s wishes. An attorney appointed by the court serves as the child’s legal advocate in a traditional attorney-client relationship.

*See Sections
7.10–7.11
(appointment
and powers and
duties), 9.3(B)
(prohibition of
discovery of
case file), and
11.14
(prohibition
against calling
L-GAL as
witness).

*See Section
7.12.

L. Required Criteria for Placing Child Outside of the Home Are Eliminated From Juvenile Code*

*See Section 8.1(B).

Effective April 1, 1998, the requirement that the court find that certain criteria are met before placing the child outside of his or her home has been eliminated from §13 of the Juvenile Code. The same criteria, however, have not been eliminated from the juvenile court rules. Prior to the statutory amendment, the court was required to find the following before ordering placement:

- F custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health, or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk, and
- F conditions of custody of the child away from a parent, guardian, or custodian are adequate to safeguard the child's health and welfare.

M. Supervising Agency Must Make Efforts to Place Child With Suitable Relative*

*See Section 8.12(B) for a discussion of these requirements.

Effective April 1, 1998, within 30 days of the child's removal from his or her home, the child's supervising agency must attempt to determine an appropriate relative placement for the child as an alternative to licensed foster care. In addition, within 90 days of the child's removal, the supervising agency is required to document its reason for the child's placement, whether with a relative or not, and notify the parties and relatives interested in caring for the child. Following this notification, the court may be required to review the supervising agency's placement decision upon request of the child's lawyer-guardian ad litem or attorney.

N. Restrictions Are Placed on Supervising Agency's Authority to Change Child's Foster Care Placement*

*See Sections 8.13–8.17.

Effective July 1, 1998, the child's supervising agency may change the child's foster care placement only if the foster parent agrees or, if the foster parent disagrees with the change, one of the following conditions applies:

- F the court orders the child returned home;
- F the change in placement is made less than 30 days after initial removal;
- F the change in placement is to a placement with a relative and is less than 90 days after initial removal; or
- F the change in placement is in accordance with other provisions of §13b of the Juvenile Code.

Provisions are made for review hearings on changes in the child's placement that are contested by the child's supervising agency, and for emergency removal of the child when there is reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is a substantial risk of harm to the child's emotional well-being.

*See Sections
13.24(C) and
16.8.

*See Section
8.9.

*See Section
12.15(A).

*See Sections
13.18 and 13.20
for a detailed
discussion of
these
requirements.

O. "Permanent Foster Family Agreements" Created*

Effective April 1, 1998, a permanent foster family agreement is an agreement for a child 14 years of age or older to remain with a particular foster family until the child reaches 18 years of age. The agreement must be between the child, the child's family (if the child is in temporary custody of the court), the foster family, and the child-placing agency. If a permanent foster family agreement is in place, review hearings can be conducted only every 182 days following a permanency planning hearing rather than every 91 days as required for children in licensed foster care.

P. Parenting Time Requirements Are Established*

Effective April 1, 1998, upon the child's removal from his or her home, frequent parenting time with the child may be ordered. However, if the court determines that parenting time may be harmful to the child, the court must order the child to have a psychological evaluation, counseling, or both, to determine the appropriateness and conditions of parenting time. The court may suspend parenting time in the interim.

If parenting time is ordered as part of the court's dispositional order, it must occur at least every seven days.

Effective March 1, 1999, parenting time is automatically suspended when a petition requesting termination of parental rights is filed, and it remains suspended at least until a decision is issued on the petition. Parenting time may be reinstated, however, with appropriate conditions, if the parent establishes and the court finds that parenting time will not harm the child.

Q. Standard Civil Jury Instructions Created for Child Protective Proceedings*

Effective June 1, 1998, new Standard Civil Jury Instructions have been created for use in child protective proceedings.

R. Child's Physician Is Required to Review Case Service Plan When Certain Injuries or Illnesses Are Diagnosed*

If the child's attending or primary care physician has diagnosed the abuse or neglect of the child as involving any of the following, the Family Independence Agency must review the Case Service Plan with the physician:

- F failure to thrive;
- F Munchausen Syndrome by Proxy;
- F Shaken Baby Syndrome;
- F a bone fracture that is diagnosed as being the result of abuse or neglect;
or
- F drug exposure.

In these cases, the court must notify the child's physician of the time and place of any hearing to determine if the child is to be returned home and allow the physician to testify at such a hearing.

S. New Time Requirements Created for Review Hearings*

When a child is in foster care, review hearings must be held every 91 days after entry of the dispositional order as long as the child is subject to the jurisdiction, control, or supervision of the court, the Michigan Children's Institute, or other agency. Previously, review hearings were required every 91 days for the first year that the child was in foster care, but only 182 days thereafter. Post-termination review hearings now also must be held every 91 days following termination of parental rights.

The provision affecting dispositional review hearings is effective April 1, 1998. The provision affecting post-termination review hearings is effective March 1, 1999.

*See Sections 16.8 (review hearings) and 19.3 (post-termination review hearings).

T. New Time Requirements Created for Permanency Planning Hearings*

Effective April 1, 1998, if a child remains in foster care and parental rights have not been terminated, the court must conduct a permanency planning hearing not more than 364 days after the original petition was filed. Formerly, a permanency planning hearing was required not more than 364 days after entry of the order of disposition. After a permanency planning hearing, review hearings must be held every 91 days as long as the child is subject to the jurisdiction, control, or supervision of the court, the Michigan Children's Institute, or other agency. However, if, at a permanency planning hearing, the court decides that the child should not be returned to his or her parents, the court must order the Family Independence Agency to initiate termination proceedings within 42 days, unless the court finds that it is clearly not in the child's best interests to do so.

*See Sections 17.2 and 17.10(B).

U. FIA Is Required to File Supplemental Petition If It Discovers Additional Abuse or Neglect*

Effective April 1, 1998, the Family Independence Agency must now file a supplemental petition with the Family Division if it substantiates additional abuse or neglect of a child who is already under the court's jurisdiction.

*See Section 16.23 for a discussion of this requirement.

V. FIA Must File Petition for Termination of Parental Rights at Initial Dispositional Hearing If Certain Circumstances Exist*

Effective March 23, 1999, the Family Independence Agency must file a petition seeking Family Division jurisdiction of the child if any of the following circumstances exist:

*See Sections 2.25 and 18.17 (termination of parental rights at the initial dispositional hearing).

- F the FIA determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the

child's home, has abused the child or a sibling and the abuse included one or more of the following:

- abandonment of a young child;
- criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
- battering, torture, or other severe physical abuse;
- loss or serious impairment of an organ or limb;
- life threatening injury;
- murder or attempted murder; or

F the FIA determines that there is a risk of harm to the child and either of the following is true:

- the parent's rights to another child were terminated as a result of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state, or
- the parent's rights to another child were voluntarily terminated following the initiation of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.

If the FIA is required to file a petition under either of these provisions, and if a parent is a suspected perpetrator of the abuse or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the FIA must include in the mandatory petition a request for termination of parental rights at the initial dispositional hearing.

W. New Grounds for Termination of Parental Rights Are Created*

Several new grounds for termination of parental rights have been added to the Juvenile Code. The court may now terminate parental rights in the following circumstances:

F effective July 1, 1999, the child or a sibling has suffered physical injury or abuse or sexual abuse, where "a nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home";

*See Chapter 18, Part III, for an overview and listing of the statutory grounds for termination of parental rights.

- F effective April 1, 1998, the parent abused the child or a sibling and the abuse included one or more of the following:
- abandonment of a young child;
 - criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
 - battering, torture, or other severe physical abuse;
 - loss or serious impairment of an organ or limb;
 - life threatening injury;
 - murder or attempted murder;
- F effective April 1, 1998, the parent's rights to another child were terminated as a result of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state;
- F effective April 1, 1998, the parent's rights to another child were voluntarily terminated following the initiation of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state;
- F effective March 1, 1999, the parent is convicted of one or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:
- first- and second-degree murder, first-, second-, third-, and fourth-degree criminal sexual conduct, and assault with intent to commit criminal sexual conduct;
 - a violation of a criminal statute, an element of which is the use of force or the threat of force, and which subjects the parent to sentencing under the habitual offender sentence enhancement provisions; or
 - a federal law or law of another state with provisions substantially similar to a crime or procedure listed or described above.

